LIFE INSURANCE POLICY AS COVERING DEATH BY LEGAL EXECUTION.

POLICY NOT PROVIDING FOR CONTINGENCY.

Whether the legal execution of the insured for a crime committed by him constitutes a defense to an action by his legal representative or beneficiaries on a life insurance policy, containing no provision excepting such manner of death from the risks covered by it, is a question which has been answered by the courts in the affirmative,[1] with but a single exception.[2]

The first decision upon this question was the English case of Amicable Society *v.* Bolland,[3] decided by the House of Lords in 1830. The facts in that case as stated by the Lord Chancellor are: "In January, 1815, Henry Fauntleroy insured his life with the Amicable Insurance Society. In the month of May, in the same year, he committed a forgery on the bank of England. He continued to pay the premiums upon his insurance for a considerable period of time. In the year of 1824 he was apprehended, and on the 29th of October in that year he was declared a bankrupt, and an assignment of his effects was made to the respondent. On the following day, the 30th of October, he was tried for forgery, found guilty, and sentenced to death, and in the month of November following was executed." The contract of insurance contained no exception to the liability of the insurer in the event the insured came to his death by the hands of public justice and the assignees of the policy brought their suit in equity to enforce the contract. The court held that there could be no

1. Burt *v.* Central Life Ins. Co., 187 U. S. 362, 23 S. Ct. 139, 47 L. Ed. 216; Northwestern Mutual Life Ins. Co. *v.* McCue, 223 U. S. 234, 245, 32 S. Ct. 220, 56 L. Ed. 419, 38 L. R. A., N. S., 57; Scarborough *v.* American National Ins. Co., 171 N. C. 353, 88 S. E. 482, Ann. Cas. 1917D, 1181; Collins *v.* Metropolitan Life Ins. Co., 27 Pa. Super. Ct. 353; American Nat. Ins. Co. *v.* Munson (Tex. Civ. App.), 202 S. W. 987. See also Supreme Commandery Knights Golden Rule *v.* Ainsworth, 71 Ala. 436, 46 Am. Rep. 332, 335; McDonald *v.* Order of Triple Alliance, 57 Mo. App. 87, 89; Bliss on Life Ins., §§ 242, 243; Vance on Life Ins., p. 524.

2. Collins *v.* Metropolitan Life Ins. Co., 232 Ill. 37, 83 N. E. 542, reversing 133 Ill. App. 326.

3. 4 Bligh, N. R. 194, 5 Eng. Reprint 70, 2 Dow. & Cl. 1, 6 Eng. Reprint 630. (This case is also known as Fauntleroy's Case).

recovery as the exception would be implied, the grounds of the decision being that to allow a recovery would "take away one of those restraints operating on the minds of men against the commission of crime." The case has not been overruled in England since. In fact the point has not again arisen there for consideration, owing, probably, to the fact that all such contingencies are now provided for by express clauses in the policy.

As in the English case so in the cases following it the defense of death by legal execution is sustained upon the ground that it is contrary to public policy to permit a recovery where the death is in consequence of a violation of the law.[4] The reasoning of the cases in reaching this conclusion is not only legally sound, but comports with the highest common sense. As said by the Supreme Court of the United States: "It cannot be that one of the risks covered by a contract of insurance is the crime of the insured. There is an implied obligation on his part to do nothing to wrongfully accelerate the maturity of the policy. Public policy forbids the insertion in a contract of a condition which would tend to induce crime, and as it forbids the introduction of such a stipulation it also forbids the enforcement of a contract under circumstances which cannot be lawfully stipulated for." [5]

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4. Burt *v.* Union Central Life Ins. Co., 187 U. S. 362, 23 S. Ct. 139, 47 L. Ed. 216; Northwestern Mutual Life Ins. Co. *v.* McCue, 223 U. S. 234, 32 S. Ct. 220, 56 L. Ed. 419, 38 L. R. A., N. S., 57; Scarborough *v.* American National Ins. Co., 171 N. C. 353, 88 S. E. 482, Ann. Cas. 1917D, 1181; Collins *v.* Metropolitan Life Ins. Co., 27 Pa. Super. Ct. 353; American Nat. Ins. Co. *v.* Munson (Tex. Civ. App.), 202 S. W. 987.

"The reason for the refusal of the courts to aid one who founds his cause of action upon his own criminal act is because of the public interests involved, which require that the laws against crime be enforced and that the courts aid no man to take a profit from their violation. The rule is enforced upon the ground of public policy alone, and not out of consideration for the defendant, to whom the advantage is incidental." Collins *v.* Metropolitan Life Ins. Co., 27 Pa. Super. Ct. 353.

5. Burt *v.* Union Central Life Ins. Co., 187 U. S. 362, 365, 23 S. Ct. 139, 47 L. Ed. 216, quoted in Northwestern Mutual Life Ins. Co. *v.* McCue, 223 U. S. 234, 32 S. Ct. 220, 56 L. Ed. 419, 38 L. R. A., N. S., 57.

Contrary Holding.—The doctrine first asserted in the English case, that death by the hands of public justice for the commission of crime avoids a contract of life insurance, was never questioned, until repudiated by the Supreme Court of Illinois in 1907, though the case itself may have led to the very general introduction of the exception into policies. The Illinois decision [6] seems to be based upon a provision of the State Constitution [7] declaring that no conviction shall work a corruption of blood or forfeiture of estate. It was held that under such provision the legal execution of insured for a capital offense was no defense to an action on a policy, in the absence of a stipulation exempting insurer from liability for such manner of death, on the theory that to permit such recovery would be contrary to the public policy of the state. The court's reasoning in its application of the constitutional provision is certainly entitled to some weight. In the course of the opinion it was said: "An insurance policy payable to the estate or personal representatives of the assured is a species of property. It is in the nature of a chose in action, which, subject to certain conditions, varying according to the terms of the contract, is payable upon the contingency of death or at a stated time. Life insurance has become an important factor in the commercial and social life of our people. To protect their credit, save their estates from embarrassment, and provide for dependent ones, the people of this state pay annually over $30,000,000 in premiums for life insurance. See Official Report of Commissioner of Insurance, part. 2, p. 6. The amount of insurance carried is approximately $1,000,000,000. Why should this enormous property interest be subject to any different conditions than those applying to any other property owned by the people? If a man is executed for crime has at his death $1,000 in real estate, $1,000 in chattels, and $1,000 life insurance payable to his estate, his real estate descends to his heir, and his personal chattels to his administrator, but the $1,000 life insurance must be left in the hands of the company who has received the premiums because it is said

6. Collins *v.* Metropolitan Life Ins. Co., 232 Ill. 37, 83 N. E. 542, 13 Ann. Cas. 129, 122 Am. St. Rep. 54, 14 L. R. A., N. S., 356, reversing 133 Ill. App. 326.

7. Const. 1870, art. 2, § 11.

to be contrary to public policy to require the company to pay, lest by so doing it lend encouragement to other policy holders to seek murder, and execution therefor, in order that their estates or heirs might profit thereby. This is defendant in error's position. This contention seems to border closely on the absurd."

Claim That Execution Unjust.—In a case decided by the Supreme Court of the United States [8] it was clearly held that a policy of life insurance does not insure against the legal execution of the insured for crime, even though he may, in fact, have been innocent, and therefore unjustly convicted and executed. It is the policy of the state to uphold the dignity and integrity of its courts of justice and as contracts insuring against miscarriage of justice would encourage litigation and bring reproach upon the state, its judiciary and executive, they would be against public policy and void.

Policy Containing Incontestable Clause.—An ordinary life policy providing that it should be "incontestable" after two years from date of issue, except for fraud, providing premiums have been paid, does not cover death of insured by legal execution for crime, though such risk was not excepted.[9] Such a clause merely means that the provisions of the policy will not be contested, and is not a waiver by the insurer of the right to defend against a risk never assumed, such as that of the legal execution of insured.[10]

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8. Burt *v.* Union Central Life Ins. Co., 187 U. S. 362, 23 S. Ct. 139, 47 L. Ed. 216.

9. Scarborough *v.* American National Ins. Co., 171 N. C. 353, 88 S. E. 482, Ann. Cas. 1917D, 1181; American Nat. Ins. Co. *v.* Munson (Tex. Civ. App.), 202 S. W. 987, 988.

10. Scarborough *v.* American National Ins. Co., 171 N. C. 353, 88 S. E. 482, Ann. Cas. 1917D, 1181.

In Collins *v.* Metropolitan L. Ins. Co., 27 Pa. Super. Ct. 353, the court, in construing an incontestable clause, used the following language: "By its terms it is not the claim presented by the insured, irrespective of the cause of death, which is made incontestable; it is merely the validity of the policy as an obligation binding upon the company."

A state statute providing for clauses of incontestability in life policies, does not change the public policy of the state, so as to permit recovery for death of insured by legal execution as punishment for crime.[11]

VALIDITY OF STIPULATION FOR LIABILITY FOR DEATH BY LEGAL EXECUTION.

Public policy forbids the insertion in an insurance contract of a condition which would tend to induce crime.[12] And so if a stipulation should be inserted in a life insurance policy, insuring against death by legal execution, it would be insurance against the commission of crime, and void as against sound principles of public policy.[13] Only in the affirmative can be an-

11. Vernon's Sayles' Ann. Civ. St. 1914, art. 4741; American Nat. Ins. Co. *v.* Munson (Tex. Civ. App.), 202 S. W. 987, 989, wherein the court said: "It was in compliance with this provision of our statute, evidently, that the clause of incontestability found in this policy was inserted. Now, defendant in error argues that the plaintiff in error in this case in effect seeks to contest the policy in question, when, by its very terms, it is expressly made incontestable after two years from the date of its issuance, except for nonpayment of premiums, and that to permit plaintiff in error to successfully make such contention would be to permit it to do that which the law of this state prohibits it from doing, by excepting death of the insured at the hands of justice from the risks assumed by it. It is argued in this connection that it is the inherent right of every sovereign state to adopt and declare its own rules of public policy relating to any subject, and that our state legislature, by the terms of section 3, art. 4741, * * * has, in effect, declared that it is not against the public policy of this state for an insurance company to insure against death by legal execution for crime, and further that, in effect, the statute prohibits an insurance company from making any such risk an exception. We cannot agree with this contention made by able counsel for defendant in error, for we cannot believe that the legislature of this state intended, by the statute above mentioned, to declare that it should be in keeping with the sound public policy of this state to permit an insurance company to make a valid contract of life insurance covering the risk of death inflicted by the courts of justice of this state."

12. Burt *v.* Union Central Life Ins. Co., 187 U. S. 362, 23 S. Ct. 139, 47 L. Ed. 216; Collins *v.* Metropolitan Life Ins. Co., 27 Pa. Super. Ct. 353.

13. Scarborough *v.* American National Ins. Co., 171 N. C. 353, 88

swered a question asked in the first case decided upon the subject: "Would not such a contract (if available) take away one of those restraints operating on the minds of men against the commission of crimes, namely, the interest we have in the welfare and prosperity of our connections?" [14]

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S. E. 482, Ann. Cas. 1917D, 1181; Collins *v.* Metropolitan Life Ins. Co., 27 Pa. Super. Ct. 353; American Nat. Ins. Co. *v.* Munson (Tex. Civ. App.), 202 S. W. 987, 988; Amicable Society *v.* Bolland, 4 Bligh N. R. 194, 5 Eng. Reprint 70, 2 Dow. & Cl. 1, 6 Eng. Reprint 630.

In Collins *v.* Metropolitan L. Ins. Co., 27 Pa. Super. Ct. 353, the court said: "Had the policy expressly insured against this risk: that is, that in consideration of the insured paying a certain sum of money, year by year, the company would, in the event of his committing capital felony, and being tried, convicted and executed for that felony, pay to his legal representatives a certain sum of money; such a contract could not be sustained. It must be held to be void upon principles of public policy."

14. Amicable Society *v.* Bolland, 4 Bligh N. R. 194, 5 Eng. Reprint 70, 2 Dow. & Cl. 1, 6 Eng. Reprint 630.